THE HON'BLE SMT.JUSTICE T.MEENA KUMARI

AND

THE HON'BLE SRI JUSTICE P.LAKSHMANA REDDY

-

WRIT PETITION No.1870 OF 2005

Dt:03.10.2005

Between:

The President of Income Tax

Appellate Tribunal

Rep.by its Registrar, 10th & 11th Floors

Lok Nayak Bhavan, NDMC Complex, Khan Market

NEW DELHI 110 001 and another … PETITIONERS

AND

Shri Abdul Razack S/o.Late Sri Abdul Aziz

Occ: Retd.Juidicial Member

Income Tax Appellate Tribunal

R/o.H.No.6-3-629/1, Ravindernagar colony

Khairatabad, Hyderabad 500 004 … RESPONDENT

THE HON'BLE SMT.JUSTICE T.MEENA KUMARI

AND

THE HON'BLE SRI JUSTICE P.LAKSHMANA REDDY

WRIT PETITION No.1870 OF 2005

ORDER: (per the Hon'ble Smt. Justice T.Meena Kumari)

This Writ Petition is filed by the petitioners-respondents to quash the Order dated 12.10.2004 in O.A.No.722 of 2004 and the Order dated 07.01.2005 in R.A.No.4108 of 2004 on the file of the Central Administrative Tribunal, Hyderabad.

The petitioners herein are the respondents and the respondent herein is the applicant in the above mentioned O.A.

The above O.A. was filed by the respondent-applicant to quash the order dated 10.07.2003 passed by the first petitioner- President of Income Tax Appellate Tribunal, New Delhi and to direct him to comply with the directions given by the Tribunal in its common order dated 01.03.2001 in O.A.Nos.1774 of 1999 and 93 of 2001; to regularize his service period of 357 days and to treat the same as qualifying service for the purpose of payment of pension and gratuity as per the Central Civil Services (Pension) Rules, 1972 (for short **'the Rules'**) . The petitioners have contested the O.A. by way of filing counter-reply. The Tribunal after hearing the arguments of the learned counsel for both the sides and after considering the material placed before it, allowed the O.A. holding that the period from the date of suspension of the respondent-applicant till the date of his retirement on superannuation shall be counted for the purpose of qualifying service in terms of Rule 27(1)(c) of the Rules and as such, the respondent-applicant is eligible for pension and pensionary benefits as he is covered under the Rules by fulfilling more than ten years of qualifying service as a Member of the Income Tax Appellate Tribunal and it directed the petitioners to pass necessary orders granting pensionary benefits to the respondent-applicant and to pay the pension payable to him under the Rules after his retirement on 14.02.2003. Aggrieved by the same, the present Writ Petition has been preferred.

It is the case of the petitioners that the respondent-applicant joined as Judicial Member on 24.09.1991 in the Income Tax Appellate Tribunal, Kolkata and retired on 14.02.2003 while he was under suspension on attaining the age of superannuation. According to the petitioners, as per the Rules, the minimum service required for the purpose of superannuation pension is ten years and as per Rule 21 of the Rules, the extraordinary leave other than the extraordinary leave granted on medical certificate cannot be counted as qualifying service for pension. As the respondent-applicant was granted the extraordinary leave of 357 days without medical certificate, the said period cannot be counted towards qualifying service and as such he did not have

the required minimum ten years of service for the purpose of grant of superannuation pension and the same was intimated to him by letter dated 10.07.2003. Questioning the same, he filed the above mentioned O.A. It is their further case that the total qualifying service of the respondent-applicant excluding the period of 357 days of extraordinary leave has been calculated to be eight years six months and five days. Since the respondent-applicant was under suspension from 20.03.2001 till his retirement on 14.02.2003, the said period also cannot be counted as qualifying service for the purpose of grant of pension and pensionary benefits. It is also their case that in terms of Rule 23 of the Rules, the period of suspension shall be counted as qualifying service for grant of pension only where, upon conclusion of the departmental inquiry, if the Officer is totally exonerated or the suspension is held to be wholly unjustified. In other cases, the period of suspension shall not be counted as qualifying service unless the competent authority expressly declares that it shall be counted to such extent as he may declare. In the case of the respondent-applicant, the departmental proceedings are still in progress even though the inquiry is completed in view of the fact that in O.A. No.184 of 2004, filed by the respondent-applicant challenging the inquiry conducted by the Inquiring Authority on the ground that it is inferior in rank to the respondent-applicant and is biased towards him, the Tribunal has granted stay on 16.02.2004 stating that the Disciplinary Authority shall take no action on the Inquiry Report till the next date of hearing and the same is still in force.

It is the contention of the learned Assistant Solicitor General appearing for the petitioners that the Tribunal erred in law while directing the petitioners to pass necessary orders granting pensionary benefits to the respondent-applicant and to pay the pension payable to him after his retirement on 14.02.2003 in terms of Rule 27(1) (c) of the Rules which is contrary to the provisions of Rule 23 of the Rules because inquiry has been conducted and the inquiry report has already been submitted and at that stage, the Tribunal by its interim Order dated 16.02.2004 in O.A.No.184 of 2004 directed that no further action be taken by the disciplinary authority on the inquiry report submitted till the next date of hearing and since the same is still in force. In view of the fact that the departmental proceedings are still pending, any decision on the question of treating the period of suspension as qualifying service or not can be taken only upon conclusion of the said departmental proceedings. In view of this, the direction of the Tribunal to grant pension to the respondent-applicant even before the conclusion of the departmental proceedings is

piteously perverse.

It is submitted by the learned counsel for the respondent-applicant that the respondent is deprived of his provisional pension and also gratuity for which he is entitled to, which cannot be withheld even there are any charges pending against him.

As the matter is *subjudice* in O.A.No.184 of 2004 and even though the respondent has retired on 14.02.2003 while he was under suspension and since the suspension cannot be treated as punishment, we modify the Order of the Tribunal to the effect that the petitioners shall pay the provisional pension and the gratuity to the respondent-applicant as per his entitlement within a period of three months from the date of receipt of a copy of the order. It is also made clear that the respondent-applicant can revive his request for payment of full pension after the disposal of O.A.No.184 of 2004. O.A to be disposed of within three months.

The Writ Petition is accordingly disposed of.

(T.MEENA KUMARI, J)

(P.LAKSHMANA REDDY, J)

Dt:03.10.2005

bsv/lvl